

REMARKS

I. Introductory Comments

Applicants thank the Examiner for his indication of allowable subject matter with regard to pending claims 16-26. In addition, claims 43-53 are also pending and were rejected in the Office Action under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter.

While not agreeing with the Examiner's position with respect to the Section 101 rejections, to facilitate prosecution Applicants have made amendments purely to clarify that claims 43-53 recite statutory subject matter under Section 101. Applicants thank the Examiner for his implicit suggestion on how to address the rejections. Accordingly, Applicants submit that this amendment, not made in response to any cited references, should be entered under rule 116 and that all pending claims are in condition for allowance.

Accordingly, all of the pending claims are now in condition for allowance. In view of the following arguments, all claims are believed to be in condition for allowance over the references of record. Therefore, this response is believed to be a complete response to the Office Action.¹ Further, for any instances in which the Examiner took Official Notice in the Office Action, Applicants expressly do not acquiesce to the taking of Official Notice, and respectfully request that the Examiner provide an affidavit to support the Official Notice taken in the next Office Action, as required by 37 CFR 1.104(d)(2) and MPEP § 2144.03.

II. Claims 43-53 Are Directed To Statutory Subject Matter Under Section 101

The Examiner alleged that claims 43-53 are directed to non-statutory subject matter under Section 101. Specifically, the Examiner alleged that:

¹ As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

the claimed invention, in light of the specification, encompasses non-statutory subject matter since such reads on (encompasses) software or program per se' (In re Beauregard (CAFC) 35 USPQ2d 1383) and MPEP 2106 (new EXAMINATION GUIDELINES FOR COMPUTER-RELATED INVENTIONS). As for the system claims, such encompass only software or program per se' equivalents; unlike "A hardware system"; the applicant is reminded that an Operating System is software and/or a program per se'.

(Office Action, page 2.) Applicants respectfully traverse the rejections.

Applicants disagree that a software system "per se" is unpatentable subject matter under Section 101 (and further disagrees that the case cited - In Re Beauregard - holds as such). However, in the interest of advancing prosecution of this long-pending application, independent claim 43 is now amended to recite "[a] computing system comprising at least one computing device" configured as recited in the context of claim 43. Claims 44-53, depending directly or indirectly from independent claim 43, are accordingly also directed to a "computing system comprising at least one computing device" that is "further configured." Amended claim 43, as well as claims 44-53 that depend therefrom, clearly recite patentable subject matter under Section 101.

Applicants therefore respectfully request for the Examiner to withdraw the Section 101 rejections of claims 43-53, and to pass the claims on to issue.

CONCLUSION

In view of the above amendment, Applicants believe the pending application is in condition for allowance.

It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account No. 18-0013, under Order No. 65632-0588. To the extent necessary, a petition for extension of time under 37 C.F.R. § 1.136 is hereby made, the fee for which should be charged against the aforementioned account.

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Respectfully submitted,

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